

House Engrossed

State of Arizona  
House of Representatives  
Forty-sixth Legislature  
First Regular Session  
2003

CHAPTER 179

# HOUSE BILL 2376

AN ACT

AMENDING SECTION 15-213, ARIZONA REVISED STATUTES; RELATING TO THE STATE BOARD OF EDUCATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-213, Arizona Revised Statutes, is amended to  
3 read:

4 15-213. Procurement practices of school districts; definitions

5 A. The state board of education shall adopt rules prescribing  
6 procurement practices for all school districts in this state as follows:

7 1. The state board shall submit to the auditor general proposed rules  
8 consistent with the procurement practices prescribed in title 41, chapter 23,  
9 modifying the provisions for public notice of invitation for bids, requests  
10 for proposals and requests for qualifications to allow a governing board to  
11 give public notice of the invitation for bids, requests for proposals and  
12 requests for qualifications by publication in the official newspaper of the  
13 county as defined in section 11-255, modifying the provisions relating to  
14 disposal of materials to comply with section 15-342, paragraph 18, providing  
15 for governing board delegation of procurement authority and modifying as  
16 necessary other provisions which the state board determines are not  
17 appropriate for school districts, for procurement of construction,  
18 construction services, materials or services when the total procurement  
19 exceeds thirty thousand dollars in total cost. The rules shall include  
20 provisions specifying that school districts are not required to engage in  
21 competitive bidding in order to make the decision to participate in programs  
22 pursuant to section 15-382 and that a program authorized by section 15-382  
23 is not required to engage in competitive bidding for the services necessary  
24 to administer the program or for purchase of insurance or reinsurance. The  
25 rules for procurement of construction projects shall include provisions  
26 specifying that surety bonds furnished as bid security and performance and  
27 payment bonds shall be executed and furnished as required by title 34,  
28 chapter 2 or 6, as applicable.

29 2. The state board of education shall adopt rules for procurements  
30 involving construction not exceeding one hundred fifty thousand dollars which  
31 shall be known as the simplified school construction procurement program. At  
32 a minimum, the rules for a simplified construction procurement program shall  
33 require that:

34 (a) A list be maintained by each county school superintendent of  
35 persons who desire to receive solicitations to bid on construction projects  
36 to which additions shall be permitted throughout the year.

37 (b) The list of persons be available for public inspection.

38 (c) A performance bond and a payment bond as required by this section  
39 be provided for contracts for construction by contractors.

40 (d) All bids for construction be opened at a public opening and the  
41 bids shall remain confidential until the public opening.

42 (e) All persons desiring to submit bids be treated equitably and the  
43 information related to each project be available to all eligible persons.

44 (f) Competition for construction projects under the simplified school  
45 construction procurement program be encouraged to the maximum extent

1 possible. At a minimum, a school district shall submit information on each  
2 project to all persons listed with the county school superintendent by any  
3 school district within that county.

4 (g) A provision, covenant, clause or understanding in, collateral to  
5 or affecting a construction contract that makes the contract subject to the  
6 laws of another state or that requires any litigation, arbitration or other  
7 dispute resolution proceeding arising from the contract to be conducted in  
8 another state is against this state's public policy and is void and  
9 unenforceable.

10 3. ON OR BEFORE DECEMBER 31, 2004, THE STATE BOARD OF EDUCATION SHALL  
11 ADOPT RULES FOR THE PROCUREMENT OF GOODS AND INFORMATION SERVICES BY SCHOOL  
12 DISTRICTS AND CHARTER SCHOOLS USING ELECTRONIC, ON-LINE BIDDING. THE RULES  
13 ADOPTED BY THE STATE BOARD SHALL INCLUDE THE USE OF REVERSE AUCTIONS AND  
14 SHALL BE CONSISTENT WITH THE PROCUREMENT PRACTICES PRESCRIBED IN TITLE 41,  
15 CHAPTER 23, ARTICLE 13, MODIFYING AS NECESSARY THOSE PROVISIONS AND THE RULES  
16 ADOPTED PURSUANT TO THAT ARTICLE THAT THE STATE BOARD DETERMINES ARE NOT  
17 APPROPRIATE FOR SCHOOL DISTRICTS AND CHARTER SCHOOLS. UNTIL THE RULES ARE  
18 ADOPTED SCHOOL DISTRICTS AND CHARTER SCHOOLS MAY PROCURE GOODS AND  
19 INFORMATION SERVICES PURSUANT TO TITLE 41, CHAPTER 23, ARTICLE 13 USING THE  
20 RULES ADOPTED BY THE DEPARTMENT OF ADMINISTRATION IN IMPLEMENTING THAT  
21 ARTICLE.

22 ~~3.~~ 4. The auditor general shall review the proposed rules to  
23 determine whether the rules are consistent with the procurement practices  
24 prescribed in title 41, chapter 23 and any modifications are required to  
25 adapt the procedures for school districts.

26 ~~4.~~ 5. If the auditor general approves the proposed rules, the auditor  
27 general shall notify the state board in writing and the state board shall  
28 adopt such rules.

29 ~~5.~~ 6. If the auditor general objects to the proposed rules, the  
30 auditor general shall notify the state board of the objections in writing and  
31 the state board, in adopting the rules, shall conform the proposed rules to  
32 meet the objections of the auditor general or revise the proposed rules to  
33 which an objection has been made and submit the revisions to the auditor  
34 general for approval.

35 B. After the bids submitted in response to an invitation for bids are  
36 opened and the award is made or after the proposals or qualifications are  
37 submitted in response to a request for proposals or a request for  
38 qualifications and the award is made, the governing board shall make  
39 available for public inspection all information, all bids, proposals and  
40 qualifications submitted and all findings and other information considered  
41 in determining whose bid conforms to the invitation for bids and will be the  
42 most advantageous with respect to price, conformity to the specifications and  
43 other factors or whose proposal or qualifications are to be selected for the  
44 award. The invitation for bids, request for proposals or request for  
45 qualifications shall include a notice that all information and bids,

1 proposals and qualifications submitted will be made available for public  
2 inspection. The rules adopted by the state board shall prohibit the use in  
3 connection with procurement of specifications in any way proprietary to one  
4 supplier unless the specification includes all of the following:

5 1. A statement of the reasons why no other specification is  
6 practicable.

7 2. A description of the essential characteristics of the specified  
8 product.

9 3. A statement specifically permitting an acceptable alternative  
10 product to be supplied.

11 C. No project or purchase may be divided or sequenced into separate  
12 projects or purchases in order to avoid the limits prescribed by the state  
13 board under subsection A of this section.

14 D. A contract for the procurement of construction or construction  
15 services shall include a provision which provides for negotiations between  
16 the school district and the contractor for the recovery of damages related  
17 to expenses incurred by the contractor for a delay for which the school  
18 district is responsible, which is unreasonable under the circumstances and  
19 which was not within the contemplation of the parties to the contract. This  
20 subsection shall not be construed to void any provision in the contract which  
21 requires notice of delays, provides for arbitration or other procedure for  
22 settlement or provides for liquidated damages.

23 E. The auditor general may conduct discretionary reviews,  
24 investigations and audits of the financial and operational procurement  
25 activities of school districts, nonexempt charter schools and school  
26 purchasing cooperatives. The auditor general has final review and approval  
27 authority over all school district, nonexempt charter school and school  
28 purchasing cooperative audit contracts and any audit reports issued in  
29 accordance with this section.

30 F. In addition to the requirements of sections 15-914 and 15-914.01,  
31 school districts, nonexempt charter schools and school purchasing  
32 cooperatives, in connection with any audit conducted by a certified public  
33 accountant, shall contract for a systematic review of purchasing practices  
34 using methodology consistent with sampling guidelines established by the  
35 auditor general. The auditor general shall consider cost when establishing  
36 guidelines pursuant to this subsection and to the extent possible shall  
37 attempt to minimize the cost of the review. The purpose of the review is to  
38 determine whether the school district, nonexempt charter school or school  
39 purchasing cooperative is in compliance with the procurement laws and  
40 applicable procurement rules of this state. A copy of the review shall be  
41 submitted upon completion to the auditor general. The auditor general may  
42 conduct discretionary reviews of school districts, nonexempt charter schools  
43 and school purchasing cooperatives not required to contract for independent  
44 audits.

1 G. The attorney general or county attorney has jurisdiction to enforce  
2 this section. The attorney general or county attorney may seek relief for  
3 any violation of this section through an appropriate civil or criminal action  
4 in superior court including an action to enjoin a threatened or pending  
5 violation of this section and including an action to enforce compliance with  
6 any request for documents made by the auditor general pursuant to this  
7 section.

8 H. The department of education shall enact policies and procedures for  
9 the acceptance and disposition of complaints from the public regarding school  
10 procurement practices and shall forward all school procurement complaints to  
11 the attorney general.

12 I. The state board of education shall adjust the total cost provided  
13 for in subsection A, paragraph 1 of this section by the annual percentage  
14 change in the GDP price deflator as defined in section 41-563.

15 J. The state board of education and the auditor general shall adopt  
16 rules authorizing school districts to procure construction services by  
17 construction-manager-at-risk, design-build and job-order-contracting methods  
18 of project delivery. The rules adopted shall require each school district  
19 that uses construction-manager-at-risk, design-build or job-order-contracting  
20 to procure construction services to submit, on or before January 15 of each  
21 year, a report to the secretary of state on the benefits associated with the  
22 use of such procurement methods. The report shall include the number of  
23 projects completed in the preceding calendar year using that procurement  
24 method, the cost and description of each project and an estimate of any cost  
25 savings or other benefits realized through the use of that procurement  
26 method.

27 K. The dollar amount of each job order under any job-order-contracting  
28 construction services program shall not be more than the dollar amount  
29 determined pursuant to section 41-2578, subsection J, paragraph 1.

30 L. For the purposes of this section:

31 1. "Nonexempt charter school" means a charter school that is not  
32 exempted from procurement laws pursuant to section 15-183, subsection E,  
33 paragraph 6.

34 2. "School purchasing cooperative" means an entity engaged in  
35 cooperative purchasing as defined in section 41-2631.

36 3. "Total cost" means the cost of all materials and services,  
37 including the cost of labor performed by employees of the school district,  
38 for all construction as provided in subsection A of this section.

~~APPROVED BY THE GOVERNOR MAY 9, 2003.~~

~~FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 9, 2003.~~

Passed the House March 4, 2003,

Passed the Senate May 1, 2003

by the following vote: 59 Ayes,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

0 Nays, 1 Not Voting

Jake Flake  
Speaker of the House

Ken Bennett  
President of the Senate

Norman L. Joyce  
Chief Clerk of the House

Cherine Bellinger  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

5 day of May, 2003

at 11:53 o'clock P. M.

Sandra Jamieson  
Secretary to the Governor

Approved this 9 day of

May, 2003,

at 2:45 o'clock P. M.

Jan Brewer  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 9 day of May, 2003,

at 4:13 o'clock P. M.

Janice K. Brewer  
Secretary of State

H.B. 2376